IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 2966 of 2007()

CC.685/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA
CRIME NO.66/07 OF PARASSALA POLICE STATION

.....

PETITIONER: ACCUSED NOS 2 TO 7

---

1. CHRISTUDAS, JAYAVILASOM BUNGLOW, EADUVARAVILAKATHU, MARIAPURAM PO, MELAMMAKKAM CHENKAL VILLAGE, NEYYATTINKARA.

2. PONNAMMA, W/O. CHRISTUDAS OF DO..DO...

3. JAYARAJ,S/O. CHRISTUDAS OF DO...DO..

4. BEEJA,W/O. JAYARAJ OF DO...DO....

5. JAYALATHA,D/O. PONNAMMA OF DO...DO....

6. JUSTINRAJ,S/O.CHRISTUDAS OF DO...DO...

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: COMPLAINANT & STATE

---

1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA ERNAKULAM.

2. SHAJITHA,D/O. THILAKOM, KIDARAKUZHI VEEDU, VENGADAMP KULATHOOR VILLAGE, NEYYATTINKARA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2966 of 2007

Dated this the 28th day of September 2007

O R D E R

The petitioners are accused 2 to 7 in a prosecution under Section 498A I.P.C. Cognizance has been taken in that case on the basis of a final report submitted by the police after investigation in a crime. That crime, in turn, was registered on the basis of a private complaint filed by the de facto complainant/second respondent before the learned Magistrate which was forwarded to the police under Section 156(3) Cr.P.C. The first accused, as stated earlier, is the husband of the second respondent. The petitioners herein are accused 2 to 7 and they are the parents-in-law, brothers-in-law, sister-in-law and wife of one of the brothers-in-law. After cognizance was taken by the learned Magistrate, the petitioners have appeared before the learned Magistrate and have been enlarged on bail. The petitioners have at this stage come to this court with this petition under Section 482 Cr.P.C. The petitioners pray that the prosecution initiated in so far as it relates to them may be quashed invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

2. What is the ground? The learned counsel for the petitioner submits that after marriage it was realised that the second respondent was suffering from some psychiatric ailment. It was also revealed that even prior to the marriage, she had undergone

treatment for such psychiatric ailment. When the situation became intolerable, an application was filed by the first accused for declaration of nullity of marriage on that ground. Thereafter, as a retaliation, a private complaint was filed by the second respondent raising allegation of matrimonial cruelty. It is, in these circumstances, prayed that invoking the powers under Section 482 Cr.P.C, proceedings against the petitioner may be quashed.

3. The complaint filed by the second respondent before the learned Magistrate has been produced as Annexure A. Final report submitted by the investigating officer has been produced as Annexure B. I have gone through the averments in the complaint as also the allegations raised in the final report submitted by the police.

4. At the present stage of the proceedings, I shall not embark on a detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I feel it apposite that this court must remind itself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked and exercised is the extraordinary inherent jurisdiction under Section 482 Cr.P.C. Such jurisdiction has to be invoked sparingly and in exceptional cases, that too only in aid of justice. Has there been failure of justice? Is there miscarriage of

justice? Has there been abuse of process of the court? These are the questions which this court is expected to consider when called upon to consider invocation of the extraordinary inherent jurisdiction. Such jurisdiction is certainly not to be invoked as a matter of course. Satisfactory, compelling and exceptional reasons must be shown to exist to justify resort to such jurisdiction. The Code of Criminal Procedure provides for premature termination of proceedings at the instance of an indictee who feels that the allegations raised against him are groundless. He can claim discharge under Section 239 Cr.P.C. Where the allegations are groundless, the learned Magistrate is bound to invoke such jurisdiction and quash the proceedings. In every case, where premature termination by invocation of the powers under Section 239 Cr.P.C is a possibility, this court cannot be requested to invoke the jurisdiction under Section 482 Cr.P.C. In exercise of the jurisdiction under Section 482 Cr.P.C this court shall refrain itself and shall not embark on an attempt to resolve disputed questions of facts. Whether the allegations are acceptable or not, will have to be decided at later stages and certainly not by invoking the jurisdiction under Section 482 Cr.P.C.

5. In the result, this Criminal Miscellaneous Case is dismissed with the observation that the disposal of this Criminal

Miscellaneous Case will not in any way fetter the rights of the petitioners to claim discharge under Section 239 Cr.P.C. The learned Magistrate must consider such claim on merits and in accordance with law.

6. The learned counsel for the petitioners submits that unnecessary insistence on personal appearance of the petitioners would work out great hardship and loss to the petitioners. I find no reason why the learned Magistrate should insist on unnecessary personal appearance of the petitioners. They are already on bail, it is submitted. If so, the hearing under Section 239 Cr.P.C can certainly be carried out without insisting on the personal appearance of the petitioners. If and only if the court takes the view that charges are liable to be framed, need the personal presence of the petitioners be insisted by the learned Magistrate in a case like the instant one.

7. With the above observations, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007